

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 743 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

BĀTUBHĀT BĀBŪBHĀT TĀTSWĀT

Versus

Appearance:

MR HR PRAJAPATI for Petitioner

MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR. JUSTICE A.L.DAVE

Date of decision: 19/04/2000

ORAL JUDGEMENT

#. District Magistrate, Baroda, passed an order on August 29, 1999, in exercise of powers under section 3 (2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the detenu Rajubhai Babubhai Jaiswal, under the provisions of the

PASA Act.

#. The detaining authority took into consideration 12 offences registered against the detenuo besides statements of four anonymous witnesses. The detaining authority found that the fear expresses by the anonymous witnesses is genuine and therefore, the powers under section 9(2) of the PASA Act are required to be exercised by not disclosing the identity of these witnesses. After considering less drastic remedies, the detaining authority found that the detention under the PASA Act is required to be resorted to in order to immediately preventing the detenuo from pursuing his illegal and anti-social activities of a "bootlegger" which are detrimental to public order.

#. The detenuo - petitioner has challenged the order of detention on various grounds. However, Mr. Prajapati, learned advocate appearing for the petitioner has submitted that all 12 cases registered against the detenuo are pending trial. In all the cases, charge sheet has been submitted and a perusal of these charge sheets indicates that number of statements of witnesses have been recorded, which were not placed before the detaining authority and which are not supplied to the detenuo. This has vitiated the order of detention and the petition may therefore, be allowed.

#. So far as the statements are concerned, Mr. Prajapati submitted that there is improper exercise of powers under section 9(2) of the PASA Act as there is no verification done by the detaining authority personally. The authority has relied upon the verification made by Sub Divisional and recorded that he is personally satisfied about the genuineness of the fear expressed by the witnesses. Therefore, the petition may be allowed.

#. Mr. K.T. Dave, learned AGP has opposed this petition.

#. A scrutiny of grounds of detention and the papers served on the detenuo indicate that each of the charge sheets refers to several witnesses whose statements are not supplied to the detenuo and a legitimate inference can be drawn that the detaining authority has not relied on these documents. The authority has not filed any affidavit-in-reply. The result is that while deciding the proposal for detention, the authority has not considered these statements recorded under section 161 of the Code of Criminal Procedure by the investigating agency. This would vitiate the order of detention in

light of the decision in the case of Jiva Veiyapuri Madrasi v. Commissioner of Police, 1991 (1) GLH 346.

#. So far as the statements are concerned, it is apparent that the detaining authority has not personally verified the same. No exercise is undertaken by the authority to ascertain the correctness and genuineness of the statements and the fear expressed by the witnesses and for the need of exercise of powers under section 9(2) in public interest vis-a-vis right of the detenu of making an effective representation. There does not appear any contemporaneous material to indicate that such exercise was undertaken by the detaining authority. The detaining authority has not filed any affidavit-in-reply either. Under the circumstances, the contention regarding improper exercise of powers under section 9(2) of the PASA Act requires to be accepted.

#. So far as the statements of anonymous witnesses are concerned, it may be noted that the detaining authority has observed that the fear expressed by the witnesses an the statements are correct and genuine. Barring these statements, there appears nothing to indicate an exercise having been undertaken by the detaining authority for verifying correctness and genuineness of the statements and the fear expressed by the witnesses. The detaining authority has to take into consideration the background, the antecedents, the character, etc. of the detenu while considering the need for exercise of powers under Section 9(2) of the PASA Act. The authority has to scale the right of the detenu of making an effective representation on the one hand and the public interest on the other and has to strike a balance between the two. The detaining authority has not filed any affidavit nor is there any contemporaneous material to indicate undertaking of such exercise by the detaining authority and, therefore, the exercise of powers under section 9(2) of the PASA Act can be taken to have vitiated. No reliance, therefore, can be placed on these statements for sustaining the order of detention. There is improper exercise of powers under section 9(2) of the PASA Act, as there is no material to indicate the exercise as stated above (BAI AMINA v. State of Gujarat & others, 1981 GLR 1186 and Kalidas Chandubhai Kahar v. State of Gujarat & ors., 1993 (2) GLR 1659).

#. Adverting to the offences registered against the detenu, a perusal of the First Information Report and the other relevant documents supplied to the detenu makes it abundantly clear that there was no disturbance to public order. All that was involved was a law and

order situation. Resultantly, the satisfaction arrived at by the detaining authority about the activities of the detenu being detrimental to public order is without any basis. Neither the statements nor the registered offences can be accepted to form the basis of this satisfaction.

##. In view of the above discussion, the reliance placed on by the detaining authority on the statements of anonymous witnesses and the registered offences cannot be upheld. The order of detention as well as the continued detention both are rendered bad in law.

##. For the above stated reasons, the petition deserves to be allowed. The same is allowed. The impugned order of detention dated August 29, 1999 is hereby quashed and set aside. The detenu Rajubhai Babubhai Jaiswal is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

pirzada/-